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Draft Chesapeake Bay Total Maximum Daily Load

Comment On: EPA-R03-OW-2010-0736-0001

Clean Water Act Section 303(d): Notice for the Public Review of the Draft Total Maximum Daily Load (TMDL) for the Chesapeake Bay

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General Comment

As a resident of Pennsylvania, a municipal consultant, a boater and fisherman and a concerned citizen, I have followed and been involved in the Chesapeake Bay Tributary Strategy implementation and now the DEP's Watershed Implementation Plan. The Environmental Protection Agency's draft Backstop Chesapeake Bay TMDL is a disappointing action that must be reconsidered. I have included comments to the EPA's plan below.

Comment #1:

High-level Backstop allocations with additional loadings allocated to Point Sources (the Wastewater Treatment Plants), bluntly, is a very poor use of the people's money. The EPA should and must consider the impertinence of this "limit of technology" action and must revise its allocations.

In considering the limits of technology, the EPA should consider its 2009 "Nutrient Control Design Manual State of Technology Review Report" and the typical treatment plants ability to meet these total maximum daily limits on a continuous basis. The ability for all point source/wastewater plants in the watershed to meet these particular limits on a daily basis is questionable. The level of treatment by a point source is typically better than the permit requirements in order to ensure some time to adjust to the inconsistent wastewater flows and concentrations. That, by EPA definition means that the point sources must treat to greater than the limits of technology to meet the limit of technology allocation set by the EPA.

In considering this reallocation of the load, the EPA must consider that the point sources have actively participated in the load allocation process and have consistently been willing to do an appropriate share of the load reduction. To that purpose, the point sources developed a clear strategy with the DEP, with the EPA's full knowledge and participation, and are well on their way to achieving compliance with the expected load reduction and can be expected to significantly overachieve the reduction for the next five to ten years.

Comment #2:

The notion put forward by the EPA that Pennsylvania has done little to improve water quality in the Chesapeake Bay watershed is false and misleading.

Over the past 5 years, Pennsylvania, through the DEP and local efforts, has enhanced enforcement of, and has been updating, its rules, standards, and regulations. The DEP's State Water Plan of 2008 is intended to "integrate and leverage existing state and federal stormwater management regulations, policies, and requirements" through "appropriate legislation, regulation, and administrative changes." The concept is to provide "an effective, straightforward, seamless stormwater management program that is blind to regulatory origin." Pennsylvania has been and is continuing to thoughtfully fulfill its obligation to be good stewards of our natural assets. Though progress may not be as rapid as hoped for by many, and expected by national regulators, the progress has been steady. We as a State believe it is about to rapidly turn a corner towards greater coordinated compliance and better water quality through new regulatory efforts and better cooperative programs.

Some of the programs and regulations already moving the State toward cleaner water include the Stormwater Management Act 167; Sewage Facilities Act 537; Municipalities Planning Code, Chapters 102 and 105; NPDES MS4; and, through EPA and DEP, established local total maximum daily loads (TMDLs). Some of the current programs that have been undergoing comprehensive reviews and significant changes include:

- Title 25, Article II, Chapter 92a National Pollutant Discharge Elimination System (NPDES) program updates, including municipal separate storm sewer system (MS4)
- Title 25, Article II, Chapter 96 Water Quality Standards Implementation requiring TMDL development for various water courses in the state
- Title 25, Article II, Chapter 102 Erosion and Sediment Control, and Stormwater Management program updates (includes Best Management Practices, BMPs)

In order to "bring people into compliance," the DEP, has several established regulations that are slated for increased enforcement and greater use, including:

- Nutrient Trading Program through Pennsylvania Infrastructure Investment Authority (PENNVEST) and independent brokers
- Title 25, Article II, Chapter 105, Dam Safety and Waterway Management
- Title 25, Article II, Chapter 93, Water Quality Standards
- Act 167, Pennsylvania's Stormwater Management Act
- Act 38, Pennsylvania's Nutrient Management Act

To facilitate municipal compliance with the new rules and regulations, the state legislature is responding to concerns over legal aspects of funding and control of stormwater facilities and MS4 watershed programs by putting forward legislation for development for stormwater authorities (HB 1390).

The DEP has added language to the Pennsylvania Chapter 92a standards that incorporates the "latest" EPA MS4 regulations. This will ensure that Pennsylvania's rules and regulations will automatically incorporate the new EPA regulations when they are updated and keep Pennsylvania in compliance with federal rules.

There are many local efforts that have been implemented, including various county plans for consolidated nutrient trading to more functionally guide the non-point source community. These include the existing watershed groups that work to enhance the conditions of the watersheds and educate the surrounding communities. Also included are the groups like the Lancaster County Clean Water Consortium that have been gathering resources and leading local, ground up efforts to clean up the rivers and streams.

All these things take time. The Bay did not become as it is in a few years. The legal framework and the education of the public to properly work towards the restoration of the watersheds leading to the Bay may not happen in an amenable a time frame for the EPA. The EPA should and must work with Pennsylvania to assist the State in achieving these goals. The Backstop TMDL's are not an appropriate means of working with the people of Pennsylvania.

We Pennsylvanian's do not deny that some eutrophication (the growth of algae that depletes the dissolved oxygen content of the water) and the associated dead zones are present in parts of our bays and rivers. Pennsylvania understands that we can and should do better to ensure that clean water is available for generations to come. We understand that the people of this state and our surrounding states enjoy our collective waters both up and downstream of our own. What the federal government and the EPA must acknowledge, is the two hundred billion dollar elephant in the room that represents the incredible costs of these programs. If this process is not pursued in a scientific yet cost-effective manner, it will be stifling to our economy, our municipalities, our businesses, and our personal lives. The science of the process must be clear and correct, and credit must be swift with appropriate adjustments made when progress is achieved. It is evident that the EPA cannot and does not care about the costs. It is also evident that the EPA is unable to quickly adjust the science of the process and provide credit swiftly with appropriate adjustments made when progress is achieved. The EPA should and must provide a better method of providing credit for improvements as they are made.

Comment #4:

The EPA should and must adjust the science of the model to account for proper base conditions. The base model is of a pristine Bay, better than conditions ever were, or ever will be and better than the natural waters that feed the bay. The model should be revised to be "realistic" with an achievable goal with a natural, livable, workable, playable Bay – fishable and swimmable.

Conclusion:

I hope that the "Backstop" has been an effort to direct attention to the Bay's watersheds and focus attention on specific goals and necessary improvements to clean up the Chesapeake Bay. Pennsylvania's WIP should be accepted and the fine details should be worked out this next year in the revised WIP. The EPA should focus on achieving fair and equitable solutions and seize on this opportunity to engage local, state and federal stakeholders in achieving the goals to protect this natural resource.

Sincerely,
Phillip W. Brath

Concerned Pennsylvania resident, consultant, watershed member and WIP development participant.